

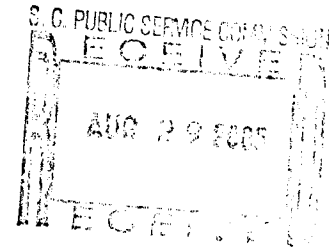
SP  
175475**ELLIS:LAWHORNE**

John J. Pringle, Jr.  
Direct dial: 803/343-1270  
[jpringle@ellislawhorne.com](mailto:jpringle@ellislawhorne.com)

August 26, 2005

**VIA ELECTRONIC AND FIRST-CLASS MAIL SERVICE**

The Honorable Charles L.A. Terreni  
Chief Clerk  
South Carolina Public Service Commission  
Saluda Building, 101 Executive Center Drive, Suite 100  
Columbia, South Carolina 29210



RE: Petition to Establish Generic Docket to Consider Amendments  
To Interconnection Agreements Resulting from Changes of Law  
**Docket No. 2004-316-C, Our File No. 803-10271**

Dear Mr. Terreni:

Enclosed are the original and ten (10) copies of the **Petition for Rehearing and or Reconsideration of Order No. 2005-247-C** for filing on behalf of NuVox Communications, Inc., Xspedius Management Co. of Charleston, LLC, Xspedius Management Co. of Columbia, LLC, Xspedius Management Co. of Greenville, LLC, and Xspedius Management Co. of Spartanburg, LLC (collectively "Joint Petitioners"), in the above-referenced docket.

By copy of this letter, I am serving all parties of record and enclosed my certificate of service to that effect.

Should you have any questions concerning this matter, please contact me.

With kind regards, I am

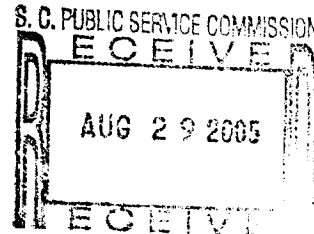
Very truly yours,

John J. Pringle, Jr.

JJP/cr

cc: Office of Regulatory Staff  
all parties of record  
Enclosures

DATE: 8/29/05  
OK DSO  
AK postmarked 8/26

**BEFORE****THE PUBLIC SERVICE COMMISSION OF****SOUTH CAROLINA****DOCKET NO. 2004-316-C**

IN RE:

Petition of BellSouth  
Telecommunications, Inc. to Establish a  
Generic Docket to  
Consider Amendments to  
Interconnection  
Agreements Resulting from Changes of  
Law

)  
)  
)  
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)

**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day, one (1) copy of the **Petition for Rehearing and or Reconsideration of Order No. 2005-247-C** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

Patrick Turner, Esquire  
**BellSouth Telecommunications, Inc.**  
PO Box 752  
Columbia SC 29202-0752

F. David Butler, Esquire  
Staff Attorney  
**South Carolina Public Service Commission**  
PO Drawer 11649  
Columbia SC 29211

E. Earl Edenfield, Jr.  
**BellSouth Telecommunications, Inc.**  
Legal Department – Suite 4300  
675 W. Peachtree Street, NE  
Atlanta GA 30375

Bonnie D. Shealy, Esquire  
**Robinson, McFadden & Moore, PC**  
PO Box 944  
Columbia SC 29202

Robert E. Tyson, Jr., Esquire  
**Sowell Gray Stepp & Laffitte, LLC**  
PO Box 11449  
Columbia SC 29211

Florence Belser, Esquire  
Office of Regulatory Staff  
Legal Department  
PO Box 11263  
Columbia SC 29211

Mr. Stan Bugner  
**Verizon South, Inc.**  
1301 Gervais St., Suite 825  
Columbia SC 29201

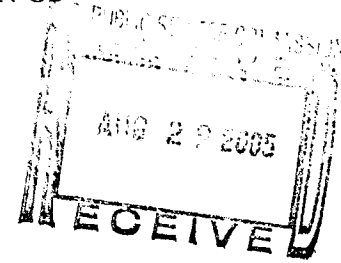
Darra Cothran, Esquire  
**Woodward, Cothran & Herndon**  
PO Box 12399  
Columbia SC 29211

Scott Elliott, Esquire  
**Elliott & Elliott, PA**  
721 Olive Street  
Columbia SC 29205

  
Carol Roof

August 26, 2005  
Columbia, South Carolina

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2004-316-C**



IN RE:

Petition of BellSouth	)	
Telecommunications, Inc. to Establish a	)	
Generic Docket to	)	<b>PETITION FOR REHEARING OR</b>
Consider Amendments to	)	<b>RECONSIDERATION OF ORDER NO.</b>
Interconnection	)	<b>2005-247</b>
Agreements Resulting from Changes of	)	
Law	)	

NuVox Communications, Inc., Xspedius Management Co. of Charleston, LLC, Xspedius Management Co. of Columbia, LLC, Xspedius Management Co. of Greenville, LLC, and Xspedius Management Co. of Spartanburg, LLC (collectively "Joint Petitioners"), through their undersigned counsel, respectfully submit this petition seeking reconsideration or rehearing of Order No. 2005-247, pursuant to S.C. Code Ann § 58-9-1200 and S.C. Regs. 103-836(4). In support of this petition, Joint Petitioners would show the following:

1. On August 1, 2005, the Public Service Commission of South Carolina ("Commission") issued Order No. 2005-247. Counsel for Joint Petitioners was served with Order No. 2005-247 by certified mail on August 16, 2005.<sup>1</sup>
3. The Joint Petitioners are all certificated Competitive Local Exchange Providers ("CLEC") of local exchange and exchange access services in South Carolina and are

<sup>1</sup> The circumstances surrounding service of the Order on the Joint Petitioners are explained in the Affidavit of John

parties to executed interconnection agreements with BellSouth which have been approved by this Commission.

2. The Joint Petitioners have participated in this docket by filing certain pleadings and participating in oral arguments.
3. The Joint Petitioners submit that their substantial rights have been prejudiced because the findings, inferences, conclusions, and orders are in error of law, violate constitutional and statutory provisions, and are arbitrary and capricious or characterized by an abuse of discretion.
4. Paragraph 233 of the Triennial Review Remand Order ("*TRRO*") issued by the Federal Communications Commission ("FCC"), FCC 04-290, clearly requires BellSouth to follow a contractual change-of-law process before it can cease providing unbundled network elements ("UNEs") to the Joint Petitioners. Until that change-of-law process is complete, the parties are obligated to comply with the rates, terms and conditions of their interconnection agreements.
5. The Commission's ruling in Order No. 2005-247 with respect to these "new adds" is unreasonable and unlawful, because it ignores the FCC's ruling in Paragraph 233 of the *TRRO*. Specifically, the Commission held incorrectly that:

Although we recognize that our conclusion with regard to new customers and new UNEs may be contrary to certain interconnection agreements, we believe that the FCC has the authority to make its order effective immediately regardless of the contents of particular interconnection agreements.

Order No. 2005-247, p. 5. The Commission's Order violates the contractual obligations

taken by BellSouth and approved by the Commission in BellSouth's interconnection agreements.

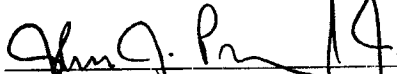
6. The Commission's Order was erroneous as a matter of law because it amends existing interconnection agreements in a manner other than that agreed to by the parties and required by federal law.
7. The Commission's Order is further unlawful in its finding that the Abeyance Agreement entered into by BellSouth and the Joint Petitioners did not apply to prevent provisions of the *TRRO* from trumping provisions of the parties' existing interconnection agreements.
8. The Commission's ruling with respect to the Abeyance Agreement incorrectly presumes that changes of law can be incorporated into existing interconnection agreements without negotiation or arbitration and in the face of a mutual agreement to the contrary. In the Abeyance Agreement, BellSouth and the Joint Petitioners agreed that changes of law resulting from *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*) *cert. denied*, 125 S.Ct. 313, 316, 345 (2004). ("*USTA II*") and its progeny (which includes the *TRRO* that was issued in response to *USTA II*) would be negotiated or arbitrated in the context of their new replacement interconnection agreements currently being arbitrated by the Commission in Docket No. 2005-57-C.
9. Accordingly, the Commission's ruling on the Abeyance Agreement ignores the fact that Joint Petitioners and BellSouth voluntarily negotiated an agreement that changes of law resulting from *USTA II* and its progeny would be incorporated into the new arbitrated interconnection agreements and that the parties would continue to operate under their existing interconnection agreements which do not incorporate such changes of law. As

such, Order No. 2005-247 contravenes federal and state law.

WHEREFORE, the Joint Petitioners respectfully request that the Commission issue an Order:

1. Reconsider and rehear its decision in Order No. 2005-247;
2. Order BellSouth to continue accepting and processing Joint Petitioner orders for all UNEs under the rates, terms, and conditions of their approved interconnection agreements;
3. Order BellSouth to honor its Abeyance Agreement; and
4. Grant such other further relief as is just and proper.

**ELLIS, LAWHORNE & SIMS, P.A.**



John J. Pringle, Jr., Esquire

1501 Main Street, 5<sup>th</sup> Floor

P.O. Box 2285

Columbia, South Carolina 29202

Telephone: (803) 779-0066

Facsimile: (803) 799-8479

Attorneys for the Joint Petitioners

Columbia, South Carolina  
August 26, 2005

# **Exhibit 1**



**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2004-316-C**

IN RE:

Petition of BellSouth	)	
Telecommunications, Inc. to Establish a	)	
Generic Docket to Consider	)	<b>AFFIDAVIT OF JOHN J. PRINGLE, JR.</b>
Amendments to Interconnection	)	
Agreements Resulting from Changes of	)	
Law	)	

The Affiant, after having first being duly sworn, deposes and states as follows:

1. My name is John J. "Jack" Pringle, Jr. I am a shareholder with the firm of Ellis, Lawhorne and Sims, P.A. I serve as counsel for the "Joint Petitioners" in this Docket.
2. I am informed and believe that the Commission issued its Order No. 2005-247 (the "Order") on or about August 1, 2005. I became aware of the Order's issuance by means of the Commission's Docket Management System ("DMS").
3. I awaited service of the Order via certified mail, as is the Commission's practice pursuant to S.C. Code § 58-9-1160.
4. After several days, when I had not been served with a copy of the Order, I became concerned that there may have been some problem with the service of the Order.
5. Accordingly, this office had several communications with the Commission's Docketing Staff regarding service of the Order.

6. Following these communications, on August 12, 2005, the Docketing Department sent the Joint Petitioners, via certified mail, a copy of the Order. I received the Order on August 16, 2005.

7. At that time, consistent with S.C. Code § 58-9-1200, I calendared August 26, 2005 as the deadline to file a Petition for Rehearing or Reconsideration of the Order.

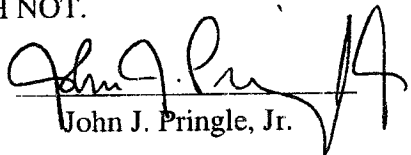
8. On August 25, 2005, I discovered that the Order had been received in the offices of Ellis, Lawhorne & Sims, P.A., on August 3, 2005, and had been misplaced.

9. The first time I saw a copy of the Order served on my clients by the Commission was August 16, 2005.


10. The contact my office and I had with the Docketing Department took place between August 3<sup>rd</sup> and August 12<sup>th</sup>. Further, as demonstrated by the postmark on the Order (attached hereto as **Exhibit A**), the Docketing Department sent the Order on August 12<sup>th</sup>.

11. I have discussed the matters set out herein with counsel for BellSouth Telecommunications, Inc. ("BellSouth"), the Office of Regulatory Staff ("ORS"), and ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom").

AND FURTHER THE AFFIANT SAYETH NOT.

  
John J. Pringle, Jr.

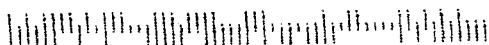
Sworn and subscribed before me  
this 26<sup>th</sup> day of August, 2005

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: 5/2015

August 26, 2005

# **Exhibit A**

. Pringle, Jr., Esquire  
; LAWHORNE & SIMS, P.A.  
Box 2285  
Columbia, SC 29202



**RECEIVED**

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

AUG 16 2005

ELLIS LAWHORNE  
& SIMS, P.A.

DOCKET NO. 2004-316-C - ORDER NO. 2005-247

AUGUST 1, 2005

IN RE: Petition of BellSouth Telecommunications, ) ORDER ADDRESSING  
Inc. to Establish a Generic Docket to ) PETITION FOR  
Consider Amendments to Interconnection ) EMERGENCY RELIEF  
Agreements Resulting from Changes of Law. )

This matter comes before the Public Service Commission of South Carolina (the Commission) on a Petition for Emergency Relief submitted by Nuvox Communications, Inc., Xspedius Management Co. of Charleston, LLC, Xspedius Management Co. of Columbia, LLC, Xspedius Management Co. of Greenville, LLC, Xspedius Management Co. of Spartanburg, LLC, KMC Telecom III, LLC, and KMC Telecom V, Inc. (collectively, the CLEC Petitioners) on March 2, 2005, and a related letter from ITC^DeltaCom Communications, Inc. submitted to the Commission on February 23, 2005. This Order also disposes of the Emergency Petition filed by Amerimex Communications Corp. filed on March 4, 2005, and the similar letter filed by Navigator Telecommunications, LLC submitted on March 3, 2005. Amerimex subsequently withdrew its Emergency Petition.

The CLEC Petitioners request that this Commission grant the following relief: (1) declare that the transitional provisions of the Triennial Review Remand Order ( TRRO) issued by the Federal Communications Commission (FCC) on February 4, 2005, are not self-effectuating, but rather are effective at such time as the parties' existing

# **EXHIBIT EIGHT**

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2004-316-C - ORDER NO. 2005-495

OCTOBER 3, 2005

IN RE: Petition of BellSouth Telecommunications, ) ORDER DENYING  
Inc. to Establish a Generic Docket to Consider ) REHEARING OR  
Amendments to Interconnection Agreements ) RECONSIDERATION  
Resulting from Changes of Law. )

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Rehearing or Reconsideration of Order No. 2005-247 filed by NuVox Communications, Inc., Xspedius Management Co. of Charleston, LLC, Xspedius Management Co. of Columbia, LLC, Xspedius Management Co. of Greenville, LLC, and Xspedius Management Co. of Spartanburg, LLC (collectively the "Joint Petitioners"). Because of the reasoning as discussed below, we deny and dismiss the Petition.

First, the Joint Petitioners allege that Order No. 2005-247 is erroneous as a matter of law because it amends existing interconnection agreements in a manner other than that agreed to by the parties and required by federal law. This is not a new argument. It was raised by the Joint Petitioners prior to issuance of Order No. 2005-247, and indeed, it was addressed in that Order at 5, where we stated that "we agree with the New York Commission, which stated that 'Paragraph 233 must be read together with the FCC directives that UNE-P obligations for new customers are eliminated as of March 11,

2005.” Thus, the right to assert contractual obligations must be read congruently with one of the overall goals of the *TRRO*, which was that certain classes of UNEs were no longer to be made available after March 11, 2005, at TELRIC prices.” We further stated that “the FCC has the authority to make its [TRRO] order effective immediately regardless of the contents of particular interconnection agreements” and that “the FCC may undo the effects of its own prior decisions, which have been vacated by the Federal Courts on several occasions.” These statements are well-founded in law and are consistent with the decisions of various federal courts and other State Commissions. Therefore, the first ground of the Petition is without merit.

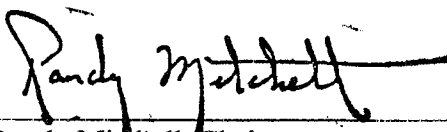
Second, the Joint Petitioners also restate their arguments that the Abeyance Agreement exempts them from the Commission’s Order. Once again, we addressed this argument in Order No. 2005-247 wherein we stated: “[t]he Abeyance Agreement simply provides that the parties will continue to operate under their current Commission-approved interconnection agreements until they move into a new agreement (either via negotiated agreement or via arbitration pursuant to a subsequent petition for arbitration of a new interconnection agreement.)” Order No. 2005-247 at 9. As we noted in our Order, “[t]he Agreement says nothing of changes of law that might be mandated by the FCC in the TRRO.” *Id.* We further noted that the Joint Petitioners “argue that BellSouth essentially gave up the right to implement [the new rules the FCC adopted in its *TRRO*] for the current Agreement even before any party knew what those rules would contain.” *Id.* However, we rejected that argument “because it impermissibly leads to unreasonable




results.” Id. We see no reason to revisit our decision with regard to the Abeyance Agreement.

Because of this reasoning, we deny and dismiss the Petition. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
\_\_\_\_\_  
Randy Mitchell, Chairman

ATTEST:

  
\_\_\_\_\_  
G. O'Neal Hamilton, Vice-Chairman

(SEAL)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

NUVOX COMMUNICATIONS, INC.

and

XSPEDIUS COMMUNICATIONS, LLC,

Plaintiffs,

v.

PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA, and RANDY  
MITCHELL, G. O'NEAL HAMILTON,  
JOHN E. HOWARD, DAVID A. WRIGHT,  
ELIZABETH B. FLEMING, MIGNON L.  
CLYBURN, and C. ROBERT MOSELY, in  
their official capacities as Commissioners of  
the Public Service Commission of South  
Carolina, and BELLSOUTH  
TELECOMMUNICATIONS, INC.,

Defendants.

Case 05-cv-\_\_\_\_\_

**Plaintiffs' Responses to Rule 26.01  
Interrogatories**

Plaintiffs hereby provide their responses to the Rule 26.01 Interrogatories as follows:

A. State the full name, address and telephone number of all persons or legal entities who may have a subrogation interest in each claim and state the basis and extent of said interest.

**Response:** N/A

B. As to each claim, state whether it should be tried jury or non-jury and why.

**Response:** Non-jury. This case seeks review of a South Carolina Public Service Commission ruling.

C. State whether the party submitting these responses is a publicly owned company and separately identify: (1) each publicly owned company of which it is a parent, subsidiary, partner